

PUBLIC SERVICE COMMISSION OF WISCONSIN

Minutes and Informal Instructions of the Open Meeting of
Thursday, August 13, 2009

The Public Service Commission of Wisconsin (Commission) met as noticed. Present were Chairperson Callisto, Commissioner Meyer, and Commissioner Azar.

Minutes

The Commission approved the minutes of the Open Meeting of Thursday, July 30, 2009.

1470-ER-103 – Application of Cuba City Electric & Water Utility, Grant and Lafayette Counties, Wisconsin, as an Electric Public Utility, for Authority to Increase Electric Rates

The Commission approved the Notice of Proceeding and directed it be signed by the Secretary to the Commission on behalf of the Commission.

4220-CE-171 – Application of Northern States Power Company–Wisconsin to Construct and Operate a New East Baldwin 161/23.9 Kilovolt Electrical Substation and Associated Facilities in St. Croix County, Wisconsin

The Commission approved the Notice of Investigation and directed it be signed by the Secretary to the Commission on behalf of the Commission.

6580-WR-103 – Application of Winneconne Water Utility, Winnebago County, Wisconsin, for Authority to Increase Water Rates

The Commission approved the Notice of Proceeding and directed it be signed by the Secretary to the Commission on behalf of the Commission.

5-AE-153 – Application of American Transmission Company LLC, Wisconsin Power and Light Company, Wisconsin Electric Power Company, Madison Gas and Electric Company, Wisconsin Public Service Corporation, and Upper Peninsula Power Company for Approval of a Project Services Agreement and Common Facilities Agreement and Termination of a Transitional Services Agreement

The Commission discussed proposed modifications to the draft Final Decision in this docket.

Based on its discussion, the Commission directed that this matter be laid over for future determination.

5-UR -104 – Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC, both d/b/a We Energies, for Wisconsin Electric Power Company to Increase its Electric, Natural Gas and Steam Rates and for Wisconsin Gas LLC to Increase its Natural Gas Rates

Wisconsin Electric Power Company's/Wisconsin Gas LLC's Proposal to Adopt a Modified One-For-One Gas Cost Recovery Mechanism

The Commission approved the proposal filed on behalf of Wisconsin Electric Power Company/Wisconsin Gas LLC to adopt a modified one-for-one Gas Cost Recovery Mechanism.

The Commission directed the Gas and Energy Division to draft an order consistent with its discussion.

5-UR-104 – Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC, both d/b/a We Energies, for Wisconsin Electric Power Company to Increase its Electric, Natural Gas and Steam Rates and for Wisconsin Gas LLC to Increase its Natural Gas Rates

1-IC-421 – Application for Intervenor Compensation Filed by Citizens' Utility Board for \$110,055 to Participate in Docket 5-UR-104

The Commission modified and approved the request filed on behalf of the Citizens' Utility Board, awarding an amount not to exceed \$95,000 in intervenor compensation.

The Commission directed the Gas and Energy Division to draft an order consistent with its discussion.

6690-UR-119 – Application of Wisconsin Public Service Corporation for Authority to Adjust Electric and Natural Gas Rates

1-IC-422 – Application for Intervenor Compensation Filed by Citizens' Utility Board for \$18,455 to Participate in Docket 6690-UR-119 (Re-Opener)

The Commission modified and approved the request filed on behalf of the Citizens' Utility Board, awarding the amount of \$13,330 in intervenor compensation.

The Commission directed the Gas and Energy Division to draft an order consistent with its discussion.

6690-FR-101 – Fuel Rules Proceeding to Adjust Wisconsin Public Service Corporation’s Electric Rates Originally Set in Docket 6690-UR-118

6690-FR-102 – Fuel Rules Proceeding to Adjust Wisconsin Public Service Corporation’s Electric Rates Originally Set in Docket 6690-UR-119

1-IC-423 – Application for Intervenor Compensation Filed by Citizens’ Utility Board for \$86,040 to Participate in Dockets 6690-FR-101 and 6690-FR-102

The Commission approved the request filed on behalf of the Citizens’ Utility Board, awarding the amount of \$86,040 in intervenor compensation.

The Commission directed the Gas and Energy Division to draft an order consistent with its discussion.

6680-UR-117 – Application of Wisconsin Power and Light Company for Authority to Adjust Electric and Natural Gas Rates

1-IC-424 – Application for Intervenor Compensation Filed by Citizens’ Utility Board for \$47,780 to Participate in Docket 6680-UR-117

The Commission modified and approved the request filed on behalf of the Citizens’ Utility Board, awarding the amount of \$41,630 in intervenor compensation.

The Commission directed the Gas and Energy Division to draft an order consistent with its discussion.

3270-UR-116 – Application of Madison Gas and Electric Company for Authority to Change Electric and Natural Gas Rates

1-IC-425 – Application for Intervenor Compensation Filed by Citizens’ Utility Board for \$11,360 to Participate in Docket 3270-UR-116

The Commission approved the request filed on behalf of the Citizens’ Utility Board, awarding the amount of \$11,360 in intervenor compensation.

The Commission directed the Gas and Energy Division to draft an order consistent with its discussion.

**5-MA-147 – Petition for Arbitration of Interconnection Rates, Terms and Conditions
Between Charter Fiberlink, LLC and Wood County Telephone Company d/b/a Solarus**

The Commission modified and approved the Interconnection Agreement submitted on behalf of Charter Fiberlink, LLC, and Wood County Telephone Company, d/b/a Solarus.

The Commission determined that the portion of the agreement adopted by arbitration meets the requirements of 47 U.S.C. §§ 251 and 252(d), and the regulations prescribed by the Federal Communications Commission pursuant to those sections, and complies with other requirements of state law as may be considered pursuant to 47 U.S.C. §§ 252(e)(3), 253(b), and 261(c).

The Commission determined that the provisions of the agreement adopted by negotiation meet the requirements of 47 U.S.C. § 252(e)(2)(A) and comply with other requirements of state law as may be considered pursuant to 47 U.S.C. §§ 252(e)(3), 253(b), and 261(c).

The Commission directed the Telecommunications Division to draft an order consistent with its discussion.

**5911-RA-100 – Objection of Time Warner Cable Information Services (Wisconsin), LLC,
to Remainder/Advance and Telephone Relay Service Assessments**

The Commission modified and approved the draft letter to Time Warner Cable Information Services (Wisconsin), LLC, regarding the payment of corrected remainder/advance and Telephone Relay Service assessments and directed that it be sent to the parties via registered mail.

A copy of the letter is attached.

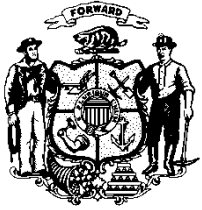
**6720-DR-101 – Petition of AT&T Wisconsin for Declaratory Ruling that its “U-verse
Voice” Service is Subject to Exclusive Federal Jurisdiction**

AT&T Wisconsin presented oral argument to the Commission regarding the issues to be considered in this docket.

The Commission adjourned the meeting at 11:56 a.m.

Sandra J. Paske
Secretary to the Commission

Attachment: Letter to Time Warner Cable Information Services (Wisconsin), LLC, dated 8/13/09



Public Service Commission of Wisconsin

Eric Callisto, Chairperson
Mark Meyer, Commissioner
Lauren Azar, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

August 13, 2009

VIA REGISTERED MAIL

Mr. Bryan K. Nowicki, Esq.
Reinhart Boerner Van Deuren S.C.
22 East Mifflin Street, Suite 600
Madison, WI 53703

Ms. Julie P. Laine, Esq.
Time Warner Cable Information Services (WI), LLC
290 Harbor Drive
Stamford, CT 06902

Re: Objection of Time Warner Cable Information Services (Wisconsin), 5911-RA-100
LLC to Remainder/Advance and Telephone Relay Service
Assessments

Dear Mr. Nowicki and Ms. Laine:

At its open meeting on July 30, 2009, the Public Service Commission of Wisconsin (Commission) considered and rejected the objection of Time Warner Cable Information Services (WI), LLC (TWCIS), to corrected remainder/advance and Telephone Relay Service (TRS) assessments made and invoiced to TWCIS as a result of a review of corrected annual reports. The Commission found that the invoiced assessments, as set forth in Exhibits 1 and 2 in the record, are not excessive, erroneous, unlawful, or invalid.

TWCIS failed to provide any factual evidence or adequate legal argument to refute the Commission's long-standing interpretation of Wis. Stat. § 196.85(2) as properly including jurisdictional interstate revenues in a utility's base of assessable revenues. The Wisconsin Supreme Court has upheld the Commission's interpretation of Wis. Stat. § 196.85(2), based upon "intrastate operations," as reasonable. *MCI Telecommunications Corp. v. State*, 209 Wis. 2d 310, 317-18, 562 N.W.2d 594 (1997).

The purpose of Wis. Stat. § 196.85(2) is to recover the Commission's cost of regulation. It is the choice and the duty of the Commission to actively participate in telecommunications issues at the national level in order to influence federal agency decisions on behalf of the citizens of Wisconsin. It is reasonable to expect that the Wisconsin customers of interstate telecommunication providers will contribute to the funding of the expenses associated with the Commission's participation in issues at the national level because of the nexus and interaction between state-regulated and federally-regulated activities.

The Commission's interpretation of Wis. Stat. § 196.85(2) is not preempted by 47 U.S.C. § 253(a), which forbids a state from actually or effectively prohibiting an entity from providing interstate or intrastate telecommunication services. The Telecommunications Act of 1996 does not imply federal preemption of a state regulation.¹ TWCIS' three preemption arguments are not persuasive. The record is uncontested as to the reasonableness of the Commission's federal activities; the inclusion of interstate activities in assessments does not create a fee unreasonably duplicative of Federal Communications Commission (FCC) regulatory fees; and the assessments are akin to taxes which are expressly excluded from the scope of the FCC's *Vonage Order*.²

The Commission also concluded that it may correct for underpayment of assessments for past fiscal years. The challenged invoices are not unlawfully retroactive, but corrective. Since at least 1984, the liability for the assessment of interstate activities having intrastate Wisconsin operations has been in place; it is a legal responsibility that TWCIS assumed when it secured certification. If TWCIS is not required to pay the back-billed assessments, customers of other utilities will have paid a disproportionately greater amount of the expenses for operation of the Commission and the TRS.

For these reasons, TWCIS' corrected remainder/advance and TRS assessments are not excessive, erroneous, unlawful, or invalid.

Please note that under Wis. Stat. § 196.85(4)(d), unless payment is received within 10 days after this notice that the objection has been disallowed, the Commission is obliged to give a notice of delinquency to TWCIS and the Secretary of Administration. If the invoices are not paid, the Secretary may institute collection action as provided in Wis. Stat. § 196.85(3). Your prompt attention to this matter will be greatly appreciated.

For the Commission:

/s/ Sandra J. Paske

Sandra J. Paske
Secretary to the Commission

SJP:MSV:hms:0:\commission dockets\5911-RA-100\Commission decision letter 8-13-09

¹ Pub. L. 104-104, 110 Stat. 143, § 601(c)(1), 1996.

² Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, 19 F.C.C.R. 22,404 (2004) (*Vonage Order*), *aff'd sub. nom.*, *Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).